

CHAPTER 1. PUBLIC EMPLOYMENT RELATIONS BOARD

SUBCHAPTER 2. DEFINITIONS AND GENERAL PROVISIONS

ARTICLE 1. Definitions

32095. Special Remedies.

“Special remedies” means any of the following:

(a) attorney fees and costs sought by a prevailing employee organization pursuant to Government Code Section 3551.5, subdivision (b)(1);

(b) attorney fees and costs sought by a prevailing party pursuant to Government Code Section 3558, subdivision (d)(4); or

(c) civil penalties assessed pursuant to Government Code Section 3551.5, subdivision (a), or Section 3558, subdivision (d)(2).

SUBCHAPTER 5. UNFAIR PRACTICE PROCEEDINGS

32610.2 Pre-Filing Procedures for Certain PECC Charges.

(a) An unfair practice charge alleging that a public employer violated Government Code Section 3558, subdivision (a) must allege that the exclusive representative notified the public employer in writing of the facts and theories of the alleged violation(s).

(b) The following subsections apply only to claims that a public employer violated Government Code Section 3558, subdivision (a) by supplying an inaccurate or incomplete list of employees to the exclusive representative.

(1) Except as provided in subsection (b)(2), a public employer shall not be liable for violation(s) that it cures within twenty (20) days from the date it receives written notice of the alleged violation(s) from the exclusive representative.

(2) A public employer shall not avoid liability by curing an alleged violation if, in the twelve (12) months immediately preceding its curative action, the employer has cured three or more alleged violations of Government Code Section 3558, subdivision (a). Each cured violation within the preceding 12-month period shall count toward the three-cure limit regardless of the exclusive representative or bargaining unit involved.

32611.8. Special Remedies for Certain PECC and PEDD Charges.

(a) An administrative law judge or the Board itself may resolve special remedies issues in conjunction with resolving liability issues. If any special remedies issues remain unresolved after a final decision involving a claim under Government Code Section 3550, or Government Code Section 3558, subdivision (a), the following procedures shall apply unless otherwise ordered:

(1) A party seeking to resolve outstanding special remedies issues must file a motion with the Office of the General Counsel no later than twenty (20) days after the decision is final. All unresolved special remedies issues must be presented in the same motion. Service and proof of service of the motion pursuant to Section 32140 are required.

(2) A motion regarding special remedies must be accompanied by a brief and sworn declarations containing competent evidence as needed to support the motion. If civil penalties are at issue, the sworn declarations shall contain evidence relevant to the criteria under the applicable Government Code Section. If attorney fees and costs are at issue, the sworn declarations shall address: the amount of time spent; reasonable market rates for attorneys with similar experience; and, if compensable legal work was integrated with non-compensable legal work, information necessary to determine the portion of time that should be compensated.

(3) Any response to a motion regarding special remedies must be filed with the Office of the General Counsel no later than twenty (20) days after the motion was filed. Any evidence relied on in the response must be supported by sworn declarations containing competent evidence. Service and proof of service of the response pursuant to Section 32140 are required.

(4) There shall be no reply briefs unless requested by a Board agent.

(5) The Office of the General Counsel shall work with the parties to resolve special remedies efficiently in conjunction with any other outstanding compliance issues and shall have discretion whether to request further written submissions, convene an evidentiary hearing, or transfer the matter to the Division of Administrative Law.

(6) If a Board agent issues an administrative decision without a hearing, the decision may be appealed to the Board itself pursuant to Chapter 1, Subchapter 4, Article 3 of these regulations. If the Board agent issues a written proposed

decision based on a hearing, the decision may be appealed to the Board itself pursuant to Chapter 1, Subchapter 4, Article 2 of these regulations.

(b) For purposes of this Section, a “final decision” is a decision that is no longer subject to appeal.